

**THE REPUBLIC OF UGANDA**  
**THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO.088 OF 2013**

**CHRISTINE MUJJWIGA & 8 OTHERS..... PLAINTIFFS**  
**VERSUS**  
**PANYAHULULU CO. LTD & 2 OTHERS ..... DEFENDANTS**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

The plaintiffs presented this suit as members of the Wabigalo Community which set up a training workshop to improve their kind in terms of empowerment and better incomes. They are eighty nine in number and claim an interest in land known as Plot 2-8 Namuwongo and Plot 2 Wabigalo Road (hereinafter called the suit land).It was their intention to acquire the suit land and use the same for self help and development. The plaintiffs raised issue against the 3<sup>rd</sup> defendants forming themselves into a limited liability company, without the consent of the plaintiffs and then obtaining a lease in respect of the suit land under circumstances indicating an intention of excluding the plaintiffs from enjoyment and use of the suit land. They further claim that the 1<sup>st</sup> and 2<sup>nd</sup> defendants procured transfer of the suit land into their names without recognizing the unregistered interest of the plaintiffs. They then sought (*inter alia*) for orders for the cancellation of the title in favour of the defendants for fraud and illegality, vacant possession and for their registration on the title in respect of the suit land.

The plaintiffs are represented by M/s Zawedde Lubwama & Co., Advocates who on 12/11/14 filed a scheduling memorandum in which the identity of the plaintiffs was raised as the first issue sought to be determined. Indeed at the hearing of 23/10/14, that same issue was again raised by Musa Kabega, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who asked court for a directive that the plaintiffs be identified by the court for fear that they were “ghost” plaintiffs who did not exist and therefore could not have instructed the above law firm to represent them. His colleague Godfrey Himbaza counsel for the 1<sup>st</sup> defendant agreed with that position and argued that the

identity of the plaintiffs was crucial in that aspect but also in the event that the defendants considered a settlement of the dispute. Himbaza's arguments were relevant as counsel Omoding who represented the plaintiffs that day, had indicated that his clients were open to a settlement and had already communicated their terms to the defendants.

Having heard the counsel, I made a directive that all parties were to be presented in court without fail at the next hearing bearing with them their identification which were to be submitted to court. Each advocate was directed to make adequate provision to comply with my order and the matter would only come up for mention in order for the court to carry out that exercise. Matter was then adjourned to 12/11/14.

On 12/11/14, the plaintiffs were represented by Ms Zawedde and Janet Amoding and on the late being queried advised court that all the plaintiffs were in court and that she was ready for the verification. All the defendants save for the 2<sup>nd</sup> defendant had representatives in court. Mr. Mukasa the representative of the 2<sup>nd</sup> defendant was reported to be sick. The Registrar of the court carried out an identification of the plaintiffs which confirmed some were present with or without identification, others were absent and one was reported deceased. Counsel for the plaintiff submitted that she would be able to produce all the plaintiffs with their identification at the next hearing and that many of the plaintiffs present and absent (and others who had not even been mentioned in the plaint) were actually beneficiaries who had buried their relatives on the suit land, that this would with the consent of the defence, necessitate her filing amended pleadings. Ms Zawedde further argued that she had written instructions of all the plaintiffs to file the suit which were filed in court but she could not at that time find her copy on her file.

All three counsel for the defendants opposed the request for the absent plaintiffs to be identified at another hearing. They argued that the ruling of the court was clear that all had to attend and no reason was advanced for their absence. They were still in doubt that counsel had instructions to represent the defendants who were absent and prayed that court dismisses the claims of the missing plaintiffs under Order 9 and Order 17 CPR.

According to Order 3 Rule 1CPR

*“Any application to or appearance or act in any court required to or authorized by the law to be made or done by a party in such court may, except where otherwise expressly*

*provided by any law for the time being in force, be made or done by the party in person, or by his or her recognized agent, or by an advocate duly appointed to act on his or her behalf, except that any such appearance shall, if the court so directs, be made by the party in person. ” (Emphasis mine).*

The present suit was filed by M/s Zawedde, Lubwama & Co., Advocates of which Ms Zawedde is assumed to be a partner. The assumption is that that firm had instructions to represent the plaintiffs and in my view, appearance of any qualified advocate from that firm would be sufficient to account for appearance by the plaintiffs whether the latter appear in court or not. According to Rule 2(1) of the Advocates (Professional Conduct) Regulations S1. 267-2, an advocate can only accept instructions from a prospective client or their agent. I see nothing in the law that requires that an individual need instruct a lawyer in writing and that a lawyer so instructed should furnish proof of such instructions in court. Those rules appear to be restricted to recognized agents (under Order 3 Rule 5) or corporate bodies and even then, recent authorities have tended to water down that requirement for corporate bodies in view of the provisions of Section 126(e) of the Constitution. To that extent, the plaintiffs would have complied with the above provisions of procedure.

However, the circumstances of this case are unique. The issue of the plaintiffs' true identities was in issue. The defendants' counsel did at all the hearings before me raise their doubts as to the existence of the plaintiffs and their identities. It was raised as an issue by the plaintiff's counsel herself in the scheduling memorandum and this is what prompted the Court to make a specific order that all the parties be presented in court with their identification documents for verification and identification. In a way, my order was waiving the general provision that a party to the suit can act through a recognized agent or an advocate. My directive would fall under the exception in Rule 3 whereby the plaintiffs were expected to appear in person. Their counsel was very much aware of this directive and in fact demonstrated readiness to carry out that exercise on 12/11/14. I would in such circumstances not allow an extension of time for any absent plaintiffs to be verified.

The verification of the Learned Registrar revealed that out of the 89 plaintiffs, only 24 were present with identification, six were present without identification and 57 were absent and one was reported deceased. Order 1 Rule 3 was not instructive of what is to be done if a party so ordered by court to appear in person fails to do so. Indeed those circumstances would not call for the striking off of the plaintiff under Order 7 Rule 11 CPR. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants prayed that court makes its decision either way and counsel for the 1<sup>st</sup> defendant prayed that this be treated as non appearance of the named defendants and their suits be accordingly dismissed.

In my opinion, Order 17 CPR would be helpful in the present circumstances. According to Order 17 Rule 3, where a party fails to appear on the date the case is adjourned for hearing, court may dispose of the suit under any of the provisions of Order 9 CPR or any other appropriate order. And under Rule 4, where a party after being given time, fails to perform any act in furtherance of their suit, the court may proceed to decide the suit immediately.

I have already ruled that although the plaintiffs were deemed represented by a firm of advocates in this suit, my order was for them to appear in person for identification. For some of the plaintiffs being absent on 12/11/14 in essence, failed when given time to take a particular step in furtherance of their suit. Their absence would amount to non appearance when the case was called up for mention, which I must emphasize was for a particular purpose (disclosed by court) that required their specific presence. In my view, the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 30<sup>th</sup>, 33<sup>rd</sup>, 35<sup>th</sup>, 37<sup>th</sup>, 38<sup>th</sup>, 39<sup>th</sup>, 41<sup>st</sup>, 43<sup>rd</sup>, 44<sup>th</sup>, 48<sup>th</sup>, 49<sup>th</sup>, 50<sup>th</sup>, 51<sup>st</sup>, 52<sup>nd</sup>, 53<sup>rd</sup>, 54<sup>th</sup>, 56<sup>th</sup>, 58<sup>th</sup>, 60<sup>th</sup>, 62<sup>nd</sup>, 63<sup>rd</sup>, 64<sup>th</sup>, 65<sup>th</sup>, 66<sup>th</sup>, 68<sup>th</sup>, 69<sup>th</sup>, 70<sup>th</sup>, 71<sup>st</sup>, 72<sup>nd</sup>, 73<sup>rd</sup>, 74<sup>th</sup>, 75<sup>th</sup>, 76<sup>th</sup>, 77<sup>th</sup>, 79<sup>th</sup>, 82<sup>nd</sup>, 83<sup>rd</sup>, 85<sup>th</sup>, 86<sup>th</sup>, 87<sup>th</sup> and 88<sup>th</sup>.

The plaintiffs were absent without reason on 12/11/14 and I move to dismiss their claims against the defendants and they are accordingly struck out of the proceedings. However, since their identity has always been a bone of contention raised by the defendants, this dismissal shall be without costs.

The 14<sup>th</sup>, 26<sup>th</sup>, 33<sup>rd</sup>, 36<sup>th</sup>, 45<sup>th</sup>, 61<sup>st</sup>, 64<sup>th</sup> and 81<sup>st</sup> defendants, were present in court but without identification documents. In the interests of justice, they should be allowed one more chance to formerly identify themselves. Their suits are thus maintained and they are ordered to appear

before the Registrar of this court within 10 days of this order armed with their identification documents for the verification to be carried out. All the defendants and/or their agents are likewise expected to be identified on the same day during the same proceedings and all counsel concerned shall be present during that exercise.

For the one defendant who is deceased, counsel for the plaintiff should within 60 days consult and confer with his relatives and obtain Letters of Administration with respect to his estate. A substitution of the appointed administrator shall be effected once that process is completed.

I have already found no reason to grant the defendant's costs of the dismissal and each party shall accordingly meet their costs with respect to today's proceedings only.

I so order.

**EVA K. LUSWATA**

**JUDGE**

**4th December, 2014**